IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 802 (SS) of 2007

Smt. Pushpa Kandpal,
W / o Sri M.M. Kandpal,
Assistant Teacher, Primary School,
Sheetal Pani, Block – Haval Bagh,
Almora. **……Petitioner.**

Versus

1. State of Uttarakhand, through Secretary, Department of Education (Basic), Uttarakhand, Dehradun.
2. Director, School Education, Uttarakhand, Dehradun.
3. Additional District Education Officer, Almora.

……Respondents.

Hon'ble M.M. Ghildiyal, J

Heard Sri Dinesh Gahatori, learned counsel for the petitioner and learned Brief Holder for State of Uttarakhand on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

i. issue a writ, order, rule or direction, in the nature of Certiorari quashing the impugned transfer order dated 11.06.2007 (Annexure no. 4) passed by respondent no. 3 as far as it relates to the petitioner.

ii. A writ, order, rule or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case.

iii. Award cost of the petition to the petitioner.

By the impugned order dated 11.06.2007 passed by Additional District Education Officer (Basic), Almora, petitioner, who is working as Assistant teacher in Primary School, Sheetal Pani, Block – Haval Bagh, Almora has been

transferred to Primary School Banthok, Block – Dhauladevi, District – Almora.

Petitioner has challenged this transfer order on three grounds. First, petitioner was appointed as Assistant Teacher on 04.03.1989 and since 04.03.1989 till date, petitioner has been working in remote areas. Second, petitioner was transferred to Primary School, Sheetal Pani, Block – Haval Bagh, Almora just before three years back and within a period of three years, she has again been transferred, which is against the guidelines issued by the State Government, which says that Assistant Teachers should not be transferred within a period of five years and third ground is that one lady teacher, who is working at Primary School, Sheetal Pani, Block – Haval Bagh, Almora, is staying there for more than 15 years and instead of transferring her, respondents have transferred the petitioner, who has yet not completed three years at present place of posting.

So far as first ground that petitioner is working in remote area since her appointment till date is concerned, this ground cannot be decided by this court, it is to be seen by District Education Officer concerned. So far as second ground that the petitioner has been transferred within a period of three years is concerned, nowhere in the Transfer Policy, it is stated that an Assistant Teacher cannot be transferred within a period of three years. Generally, in the Transfer Policy, it is stated that employee should not be transferred within three years or generally, an employee should be transferred after three years. Transfer is exigency of service. An employee can even be transferred within three months on administrative ground or for any other reason, which requires transfer of the employee.

So far as third ground is concerned that one lady teacher, who is working for more than 15 years at Primary School, Sheetal Pani, Block – Haval Bagh, Almora, has not been transferred whereas petitioner, who is working at Primary School, Sheetal Pani, Block – Haval Bagh, Almora for less than 3 years has been transferred. This question requires scrutiny.

Learned counsel for the petitioner has further submitted that on 17.12.2004, petitioner was transferred from Primary School, Pithauni, Block – Havalbagh to Primary School, Sheetal Pani, Block – Haval Bagh, Almora and immediately, after about six months, i.e. on 29.06.2005 she was again transferred from Primary School, Sheetal Pani, Block – Haval Bagh, Almora to Primary School, Pithauni, Block – Havalbagh. Consequently, she filed writ petition before this court, which was disposed of with a direction to Additional director, Basic Education, Kumaon Mandal, Nainital / Joint Director, Basic Education, Kumaon, Mandal Nainital to decide the representation of the petitioner. The said representation has yet not been decided by the respondents.

It appears that petitioner is not interested in teaching in the Institution but is interested in litigation. In any case, I find force in the submission of learned counsel for the petitioner on the point that one lady teacher, who is staying at Primary School, Sheetal Pani, Block – Haval Bagh, Almora for more than 15 years, has not been transferred but petitioner, who is working for the last three years has been transferred.

In these circumstances, I deem it fit and proper to direct the Additional District Education Officer (Basic), Almora to take decision on the representation of the petitioner dated 26.06.2007 (Annexure No. 5 to the writ petition) especially on

the point why one lady teacher, who is staying at Primary School, Sheetal Pani, Block – Haval Bagh, Almora for more than 15 years, has not been transferred though petitioner, who is working for the last three years, has been transferred within a period of one week from the date of production of certified copy of this order.

Petitioner is directed to submit the certified copy of this order within a period of one week from today.

With this direction, writ petition as well as stay application no. nil of 2007 is disposed of. No order as to costs.

(M.M. Ghildiyal, J)

July 06, 2007
SKSharma